

### **REMARKS**

The pending Office Action address claims 1, 3, 7, 11, 12, 16, 17, 25-28, 52-58, 61, and 62. Claims 1, 3, 7, 16, 17, 25, 27, 28, 52-58, 61, and 62 are rejected, and remaining claims 11, 12, and 26 are withdrawn from consideration.

Applicants thank Examiner Swiger for extending the courtesy of a telephone interview on May 27, 2009 to Applicants' undersigned representative and Lisa Adams. During the interview, the Examiner agreed that the amendments submitted herewith to independent claims 1, 28, and 52 overcome all pending rejections.

#### ***Claim Amendments***

Claim 1 is amended to recite that the guide member includes first and second lumens extending therethrough and immovable relative to one another. Claim 28 is amended to recite that the first and second opposed alignment tabs are adapted to non-fixedly interact by abutting an edge of a spinal plate to position the guide member with respect to the spinal plate. Support for this amendment can be found throughout the specification, for example, in paragraph [0036]. Claim 52 is amended to recite first and second alignment tabs that extend distally from opposed superior and inferior surfaces of the guide member, and that the at least one protrusion is formed on and extends distally from the guide member. Support for this amendment can be found throughout the specification, for example, in paragraph [0040]. No new matter is added.

#### ***Rejections Pursuant to 35 U.S.C. §102***

##### ***(1) Coates***

Claims 1, 3, 7, 16-17, 25, 27, 28, 52-55, 57-58, and 61-62 are rejected pursuant to 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,423,826 of Coates et al. As noted above, the Examiner has agreed that Coates fails to teach a guide member including first and second lumens extending therethrough and *immovable relative* to one another, as required by independent claim 1.

Accordingly, independent claim 1, as well as claims 3, 7, 16-17, 25, and 27 which depend therefrom, distinguish over Coates.

With regard to independent claim 28, the Examiner has agreed that Coates does not teach or suggest first and second opposed alignment tabs that are adapted to non-fixedly interact by abutting an edge of a spinal plate to position the guide member with respect to the spinal plate. Accordingly, independent claim 28 distinguishes over Coates.

With regard to independent claim 52, the Examiner has agreed that Coates does not teach or suggest first and second alignment tabs that extend distally from opposed superior and inferior surfaces of the guide member, and at least one protrusion that is formed on and extends distally from the guide member. Accordingly, independent claim 52, as well as claims 53-55, 57-58, and 61-62 which depend therefrom, distinguish over Coates.

*(2) Null*

Claims 52, 54-55, 57-58, and 61-62 are rejected pursuant to 35 U.S.C. §102(e) as being unpatentable over U.S. Patent No. 7,011,665 of Null et al. As noted above, the Examiner has agreed that Null fails to teach first and second alignment tabs that extend distally from opposed superior and inferior surfaces of the guide member, and at least one protrusion that is formed on and extends distally from the guide member, as required by independent claim 52. Accordingly, independent claim 52, as well as claims 54-55, 57-58, and 61-62 which depend therefrom, distinguish over Null.

*(3) Foley*

Claims 1 and 52 are rejected pursuant to 35 U.S.C. §102(e) as being unpatentable over U.S. Publication No. 2004/0092947 of Foley. As noted above, the Examiner has agreed that Foley fails to teach first and second opposed alignment tabs extending distally from the opposed superior and inferior surfaces of the guide member, as required by independent claim 1. Accordingly, independent claim 1 distinguishes over Foley.

With regard to independent claim 52, the Examiner has agreed that Foley does not teach or suggest first and second alignment tabs extending distally from opposed superior and inferior surfaces of the guide member, and at least one protrusion that is formed on and extends distally from the guide member. Accordingly, independent claim 52 distinguishes over Foley.

***Claim Rejections under 35 U.S.C. §103***

*(1) Coates*

Claim 56 is rejected pursuant to 35 U.S.C. §103(a) as being obvious over Coates. Claim 56 depends from claim 52, and thus distinguishes over Coates for at least the same reasons discussed above. Claim 56 therefore represents allowable subject matter.

*(2) Kolb*

Claim 52 is rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,960,216 of Kolb et al. As noted above, the Examiner has agreed that Kolb fails to teach first and second alignment tabs that extend distally from opposed superior and inferior surfaces of the guide member, *and* at least one protrusion that is formed on and extends distally from the guide member, as required by independent claim 52. Claim 52 therefore represents allowable subject matter.

***Conclusion***

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

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Respectfully submitted,

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